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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ERNESTO ACEDO, Defendant and Appellant.	B207538 (Los Angeles County Super. Ct. No. TA 080648)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary R. Hahn, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and Richard S. Moskowitz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ernesto Acedo timely appealed from his conviction on two counts of second degree murder and one count of arson of an inhabited structure. The jury found the multiple murder special circumstance not true. The court sentenced defendant to 35 years to life. Defendant raises several issues based on his use of Zoloft on the day before he murdered his wife and son. We affirm.

FACTUAL BACKGROUND

I. Prosecution Case

A. Background to The Murders

In May 2005, appellant's wife Maila came to the United States from the Philippines. On July 20, Maila rented an apartment. When appellant and their eight-year-old son Duke arrived in the United States on July 23, they moved into the apartment.

Peter Laranang became acquainted with Maila at his mother's house in May or June. At the time, Maila was living with Laranang's mother and working as a nurse. Laranang often drove Maila to work and would talk to Maila about her family situation; he knew Maila was scared of her husband. In mid-July, when Maila was leaving to pick up appellant at the airport, Laranang noticed she seemed sad about being reunited with her family. On July 24, Laranang received the first of a series of phone calls and text messages from appellant ordering Laranang not to call Maila again. Appellant stated he knew something was going on between Laranang and Maila. Appellant threatened to kill Laranang and said that if he could not win Maila back, he would kill her too. Maila and Laranang's relationship was not romantic.

On July 26, while Maila boarded a bus, the bus driver Benjamin Miles saw appellant outside at the bus stop holding Duke by the wrist so tightly Duke's skin turned white. When the bus doors closed, Maila told Miles that appellant told her that he would kill her and she hoped appellant would not hurt her son.

On July 31, Maila, who was upset, told her co-worker Maria Villagrana that Duke was not at her apartment. Maila said she had argued with appellant and he told her that he would kill her if she left him and she would not see her son again. Later that night, Maila and Villagrana went to Maila's apartment and called 9-1-1 from in front of the complex. Maila flagged down a police unit and told the officer that her husband was threatening to kill her, but he had not been physically abusive. The officer said nothing could be done because of the lack of physical abuse. Villagrana went inside the apartment with Maila, but left after Maila assured Villagrana she would be fine.

On August 1, appellant's aunt picked up appellant from Maila's apartment and took him to her house. Duke stayed there as well.

On August 2, Laranang saw that Maila had tried to call him. Returning the call around 8:40 a.m., Laranang told Maila that he wanted to stay out of her problems with appellant. Maila apologized. After ending the call, Laranang immediately called Maila again. Instead of getting connected, he received a text message from Maila that she could not answer because "they" were there. Around 9:00 a.m., Maila text messaged Laranang that appellant had arrived suddenly and she would call him back. That was the last time Laranang heard from Maila.

Around 9:30 a.m. on August 2, appellant's mother spoke with appellant on the phone; he was at Maila's apartment. Appellant said he wanted to see Maila and would return soon; he sounded normal.

B. The Murders

On August 2, around 9:00 a.m., Ray Arellanes, an air conditioning technician, went to Maila's apartment and knocked on the door. Appellant opened it just a few inches. Arellanes identified himself and explained he was responding to a work request. All the lights were out, the curtains were drawn, and it was dark inside the apartment. Appellant declined service, told Arellanes to leave and closed the door. Arellanes

knocked again, and appellant opened the door a crack. Arellanes said he would not return for another two weeks. Appellant, who appeared agitated and aggressive, told Arellanes not to knock again and closed the door. Arellanes knocked a third time and told appellant he needed his (appellant's) name because he was refusing service. Appellant, who used profanity, provided his name and told Arellanes not to come again. Arellanes was not able to see inside the apartment, but he noticed a strange odor. About 20 minutes later, while Arellanes was working on another apartment, he saw smoke coming from appellant's apartment building; appellant's apartment was on fire.

Deputy Sheriff Joel Rodriguez arrived at the apartment around 12:30 p.m. and saw a female inside. Maila was lying face down in the bathroom; her body was lodged between the toilet and tub. Duke was in the bedroom lying face up on a mattress. It appeared a struggle had occurred in the bathroom; the shower doors were off the track.

Maila's body was burned, especially around her buttocks and groin. Paper debris was next to her. It appeared the paper had been ignited on her rear side. The bathroom fire appeared to have been set intentionally. Maila had sustained several stab wounds to her chest and abdomen; those wounds were the cause of her death. There were cuts on Maila's hands and legs. When Maila's body was discovered, a knife was still embedded in her abdomen. As there was no soot in Maila's trachea and carbon monoxide testing was negative, the thermal injuries most likely occurred after her death. Maila's stab wounds were consistent with a knife recovered at the scene.

Duke's body was stuck on the mattress. Duke's body, excepting his arms and back, was burned to the point of disfigurement. Duke died prior to his body being burned from the fire. The fire that burned Duke was not accidental; paper remains were in a pile on the floor where the fire started. The manner of death was homicide though the exact cause could not be determined. The most probable cause of death was asphyxiation.

Some fire damage occurred on the cabinets in the area separating the living room and kitchen. Below what looked like a calendar on the cabinet was a pile of ashes. The

fire in this area also was not accidental. The three fires -- the corner of the bed, the calendar in the kitchen area and the bathroom -- were not connected.

A dispatcher had informed the fire captain who arrived first on the scene that someone had just jumped from a second story window at the rear of the complex. Appellant was found outside on the ground below the window of the apartment; the window was broken. Appellant's upper body was burned and he had a large laceration on his left arm; he was mumbling.

The apartment doors were locked from the inside. The balcony was 10 to 12 feet above the ground.

C. Other Evidence

An empty package of Zoloft with instructions for proper use was on the kitchen counter. The package did not show the name of a referring doctor. The package had a maximum dosage of 875 milligrams. Several handwritten notes were found on the kitchen table in the living room. One note was addressed to law enforcement, the government and family blaming Laranang for what happened. Another note was addressed to the American government, among other organizations, and read in part:

> I did what I believe is right and proper. My wife cheated on me after investing all my [ ] hard earned money she still have the guts to cheat on me. Here some of my evidence to prove have a [specimen] from this sperm laced tissue. The kind of cigarette butt have the cellphone Sprint examined. All text and voice mails are from Peter Laranang of St. Liz Hospital. Peter you made this happen. I blame you. To the government, pass a law putting a heavy penalty for cheaters for this not to happen again. To Peter pls have him liable [ ] in a way for decieving [sic] my wife. All of the furnitures here came from Peter check the brands and store were [sic] he bought it. (Emphasis deleted.)

In addition to the handwritten notes, a knife, a cell phone, several napkins, a shirt, five tissues, two wedding bands and a cigarette butt were neatly placed on the kitchen table. The five tissues did not contain sperm.

Analysis of the blood on the bathroom wall light switch and outside the bathroom door showed a match with appellant's DNA profile. Appellant's DNA profile also matched stains on the living room wall and bedroom window blinds. Appellant's blood alcohol level was .11 micrograms per milliliter. Appellant tested positive for Zoloft.

II. Defense Case

A. Character Witnesses

Appellant worked as territorial manager for a company promoting infant formulas to doctors. According to his supervisor, appellant was good natured and never angry. Monette Paragas had known appellant for almost 30 years. Paragas stated appellant was good natured, not violent and a peacemaker. Aurora Valdez, one of appellant's business contacts, regarded appellant as happy, non-violent and a loving husband and father. Appellant's former teacher said appellant was never violent and did not act violently towards his son. Appellant's former girlfriend never saw appellant act violently.

B. Other Evidence

When appellant's mother saw appellant on August 1, appellant was silent unlike when he had come to the United States a week earlier. On August 1, appellant met with a family friend, Phil Hipolito, who gave appellant a full packet of Zoloft. Appellant took a pill between 3:30 and 4:30 p.m. Later, appellant complained he felt dizzy and nervous. Appellant's aunt noticed appellant was acting oddly that night; he was awake the entire night, constantly going to the bathroom and looking at himself in the mirror. When his aunt left for work the next morning, appellant seemed to be out "in space." When

appellant's aunt returned later in the day, the house was a mess and appellant was not there.

C. Dr. James Merikangas's Testimony

1. Zoloft

Zoloft, which can only be prescribed by a medical doctor, is in the selective serotonin reuptake inhibitor group of drugs designed to treat depression and anxiety. In 2004, the FDA issued warnings to doctors of the serious adverse side effects (e.g., suicidal behavior, agitation, hallucinations, aggression) of these drugs, particularly Zoloft. The suggested dosage of Zoloft is 25 milligrams per day. Doctors should monitor patients closely to see how they react to it. A dosage of 500 milligrams in a 24-hour period could be harmful. Dr. Merikangas knows someone from New South Wales who had a case of a man on Zoloft who killed his wife while in a state of delirium.

The empty sample packet of Zoloft found in appellant's apartment contained spaces for seven 25-milligram tablets and fourteen 50-milligram tablets. One could have a severe reaction to Zoloft after taking one or two pills. Adverse effects from Zoloft can occur right after taking the drug. Appellant's blood level would not show a bad reaction to Zoloft. Rage, fury and extreme disturbance are behaviors consistent with Zoloft intoxication. People can fluctuate between delirium and periods of lucidity while on Zoloft.

2. Evaluation of Appellant

In October 2007, appellant told Dr. Merikangas that he did not know how his son died and that he loved his wife. Appellant said that on the morning of the incident, he took a taxi to Maila's apartment and he was extremely upset walking into the apartment.

Appellant did not remember killing his wife and son. Appellant said he had been drinking that day.

Appellant said he had previously threatened to kill Maila because he was agitated after finding out she had had an affair and had rejected intimate relations with him.

Appellant had burns over 40 percent of his body and was in a delirious state when admitted to the hospital. Appellant claimed to have suffered head injuries in two separate car accidents sometime in 1996 and 1998, but did not have any documentation of brain damage sustained from the car accidents. People who have sustained brain damage are more likely to have adverse reactions to psychotropic drugs. Appellant had a history of being a happy-go-lucky and euphoric type of person. When Dr. Merikangas saw appellant, appellant was suffering from bouts of bipolar depression, agitation, anxiety and heard voices. Appellant was currently on Seroguel, an antipsychotic drug, and Prozac, an antidepressant.

Appellant told Dr. Merikangas that he had an out of body experience during the crime, which was why he could not recall it. Appellant woke up in the hospital and knew he stabbed his wife; but it was in the heat of passion and he was possibly intoxicated with alcohol. Based on that account, Dr. Merikangas concluded appellant had had a dissociative episode. Dr. Merikangas did not know whether appellant took most of the Zoloft before or after the killings. The level of Zoloft in a person's blood does not correlate with the effects the drug has on the brain.

In Dr. Merikangas's opinion, a man with no history of violence, on Zoloft for the first time, taking 500 milligrams of the drug in a 24-hour period, acting oddly, experiencing dizziness and having marital problems, who kills his wife and son, sets a series of fires and burns himself, and afterwards describes an episode of seeing two of himself when asked about the killing, is not thinking normally or in control. That person has delirium and periods of unconscious behavior and is intoxicated by Zoloft.

III. Prosecution Rebuttal

On July 28, appellant told the leasing agent that he was upset because Maila did not want him there due to his indiscretions in the Philippines.

When Dr. Gordon Plotkin conducted a psychiatric examination of appellant on November 1 for the prosecution, he found appellant appeared to be a little depressed and anxious, but appellant showed no signs of psychosis or significant mood swings. Appellant had no problem comprehending and explaining why he was there. Appellant said he was anxious and emotional before the incident and did not experience blackouts or seizures during it. Appellant had spent 10 years working as a drug representative for a major pharmaceutical manufacturer in the Philippines. When asked if he had any prior psychiatric treatment, appellant replied he had never been evaluated or treated by a psychiatrist and had not taken any psychiatric medication before he was incarcerated. Appellant denied any depressive episodes, manic or irritable mood episodes, auditory hallucinations, visions, delusions or other psychotic symptoms.

Appellant said he was upset as his wife blocked his romantic advances and told him the relationship was over. Appellant thought she had a boyfriend (Laranang). Appellant initially told Dr. Plotkin that he took two or three Zoloft pills, did not remember what happened, his son died of smoke inhalation and his wife died of stab wounds. Appellant gave an elaborate account of what happened between himself and his wife in the days leading up to the incident, but claimed he could not remember anything about the incident itself. After Dr. Plotkin pressed him, appellant said he drank a lot of beer, felt his body become heavy and remembered his wife seeing him hold a knife and running away from him. After Maila ran into the bathroom, appellant opened the door and stabbed her. Appellant said the next thing he recalled was being on fire in the house. Appellant admitted he knew he stabbed his wife, but stated it was in the heat of passion and he was possibly intoxicated with alcohol.

Dr. Plotkin opined a blackout like that described by appellant was medically impossible. When asked whether a hypothetical person in circumstances resembling those faced by appellant could have been delirious or suffering from a dissociative episode, Dr. Plotkin stated both theories were impossible. The out-of-body experience appellant reported to Dr. Plotkin was quite different from the experience he reported to Dr. Merikangas. Appellant told Dr. Plotkin the episode occurred when he "was in pain and on fire," not at the time of the stabbing as he told Dr. Merikangas.

Appellant told Dr. Plotkin that Zoloft had no effect except to make him sleepy and it was like scotch, but stronger. According to Dr. Plotkin, a person who expresses anger at another, understands the reason for stabbing the person, and is in control of his actions, is not suffering from delirium. One cannot be delirious and do a complex action like killing someone. The concept of a Zoloft delirium is nonsense. While in jail, appellant was prescribed Paxil, an anti-depressant; it is comparable in strength to Zoloft and has a similar side-effects profile. The FDA warnings for Zoloft were "across the board for all antidepressants" and pertained mainly to children and adolescents; the warnings said nothing about homicidal behavior.

Appellant was standing away from the fire when he broke the window; the incoming air made the fire come toward him.

On August 1, Maila told a co-worker she was a battered woman.

After appellant arrived in the United States, he called Laranang's mother and vowed to kill her and Laranang because she had helped Maila get a job. Appellant also said he would kill her family in the Philippines and the United States and Maila's family.

On July 31, Maila disclosed to her mother that she did not want to be in the marriage anymore and a third party was not involved.

IV. Sanity Phase

Dr. Merikangas interviewed appellant at the Twin Towers on October 10 for about two hours. Appellant described an incident where he saw himself as two people. Dr.

Merikangas interpreted that incident as a dissociative episode. A person suffering from such an episode is either experiencing delirium or has a severe mental defect. One cannot always tell if "someone is in such a state just by looking at him." It is possible for someone who has a delirium or a dissociative episode to come out of it several hours later and write a letter.

Dr. Merikangas diagnosed appellant as suffering from bipolar affective disorder, commonly known as manic depression. When appellant arrived in the United States after an 18-hour flight, his wife's coldness sparked a severe depression, in which he could not sleep or eat and his thinking was deranged.

The FDA has directed doctors to proceed with caution when prescribing Zoloft to patients with bipolar disorder. When appellant was given Zoloft by someone not qualified to prescribe it, he had an adverse reaction. Instead of taking the standard 25-milligram starting dose, appellant took more when he thought it was not working, which in turn triggered a manic episode. When appellant came into contact with his wife, he had such a severe reaction to the medication that he was not in control of his own mind. Zoloft is not a drug of abuse like PCP or LDS. An involuntary intoxication can result from a therapeutic use of Zoloft. A person can experience negative side effects from a single dose. It is entirely possible such a person could take the pills almost unconsciously. The fact appellant had not slept in a long time, was in a state of depression, had trouble concentrating and suffered from severe headaches could have caused that to happen.

When asked whether a hypothetical individual with bipolar disorder and a troubled marriage, who takes between one and 21 Zoloft tablets in a 15-hour period, then stabs his wife to death, smothers his son, sets fire to both victims and the apartment he was in, and tries to kill himself, understands the nature and quality of his acts and knows them to be wrong, Dr. Merikangas responded, persons "with delirium from drug ingestion are not capable of understanding the nature and quality of their act." "The question of morality does not enter their ability to cope with it because their brain is not functioning the way it

would normally be." When in such a state, the person has no control over what he is thinking and doing and would be watching it happen as if they were a spectator.

DISCUSSION

I. Directed Verdict

Appellant contends the court erred in granting a directed verdict on the issue of insanity as the court assumed the role of the trier of fact and incorrectly decided the inapplicability of legal insanity based on an instruction rather than statutory law.

A. The Motion

Appellant pled he was not guilty by reason of insanity. The issue of sanity was bifurcated and tried separately. At the close of the defense case in the sanity phrase, the People moved for a directed verdict on the theory that at the most, appellant's evidence suggested he was voluntarily intoxicated on the prescription drug Zoloft. The court agreed and referred to the directions on the Zoloft package. The court reasoned that as there was no indication appellant had seen a doctor or had a prescription for Zoloft, he had taken the drug voluntarily and his resulting state of intoxication was likewise voluntary.

B. The law

"[T]rial courts have the inherent power to remove an insanity defense from the jury when there is no evidence to support it and there is no constitutional infirmity in the court doing so." (*People v. Severance* (2006) 138 Cal.App.4th 305, 315.) A defendant must prove the defense, and "[i]f he fails to offer sufficient evidence to do so, then the court may remove the issue of sanity from the jury." (*Ibid*.) In order to take the fact

issue of insanity from the jury, it is necessary that "'only one conclusion is legally deducible and any other conclusion cannot command the support of substantial evidence that will survive appellate review.'" (*Id*., at p. 316.) In reviewing such a directed verdict, "we look for substantial evidence from which the jury reasonably could have found defendant was not sane. If we find such evidence, then a directed verdict of sanity was improper." (Italics deleted.) (*Id*., at p. 320.)

The test of legal sanity in California is the rule in *M'Nagthen's Case*, which provides the accused must prove """by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense."""" *(People v. Severance, supra*, 138 Cal.App.4th at p. 321.) The Supreme Court has recognized that the two basis for a verdict of not guilty by reason of insanity are independent and distinct and that even though Penal Code section[1] 25, subdivision (b) does not specifically mention it, the "'incapacity must be based on a mental disease or defect.'" (*Id*., at pp. 321-322.)

"No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition." (§ 22, subd. (a).) Voluntary intoxication includes intoxication from liquor, drugs, or other substance. (§ 22, subd. (c).) "Hence, voluntary intoxication, whether induced by liquor or drugs, is not a defense." (1 Witkin & Epstein , Cal. Criminal Law (3d ed. 2000) Defenses, § 26, p. 355.) However, involuntary intoxication is a defense. (See *id*., at § 34, pp. 364-365; *People v. Chaffey* (1994) 25 Cal.App.4th 852, 856.) Appellant argues whether he was voluntarily or involuntarily intoxicated was a question for the jury. (*People v. Baker* (1954) 42 Cal.2d 550, 575.)

Appellant's insanity defense was that during the crimes, he was in an unconscious state caused by involuntary intoxication from Zoloft. Dr. Merikangas opined that

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1 All statutory references are to the Penal Code.

appellant's mental condition of delirium was caused by his ingestion of Zoloft, and Zoloft caused the temporary condition that made him do the horrible crimes in this case.

Involuntary intoxication is sometimes described as innocent intoxication. (Perkins & Boyce (Criminal Law (3d ed. 1982), p. 1001.) The text notes, "Voluntary intoxication is not limited to those instances in which drunkenness was definitely desired or intended but includes all instances of culpable intoxication. It may be voluntary although the drinking was induced by the example or persuasion of another, and the mere fact that the liquor or drug was supplied by someone else does not tend in any way to show that the intoxication was involuntary." (Fns. & emphasis omitted.) (*Ibid.*; see also Annot., Involuntary Intoxication as Defense (1976) 73 A.L.R.3d 195, 199-200 ["Involuntary intoxication, it appears, was first recognized as that caused by the unskillfulness of a physician or by the contrivance of one's enemies. Today, where the intoxication is induced through the fault of another and without any fault on the part of the accused, it is generally treated as involuntary." (Fns. omitted.); see e.g., *People v. Scott* (1983) 146 Cal.App.3d 823, 825, 831-832 [The defendant drank punch at a party and began acting in a bizarre manner thinking he was a secret service agent and was charged with unlawfully taking or driving a vehicle; the appellate court held his actions were not criminal because his delusion was caused by involuntary intoxication from unknowingly ingesting a hallucinogenic substance.].)

In the case at bar, the court concluded the evidence of appellant's voluntary intoxication (because of his ingestion of Zoloft) precluded a finding of insanity. Appellant argues the court disregarded the conflicting evidence he was involuntary intoxicated because of the unanticipated adverse side effects of Zoloft. The court cited CALCRIM No. 3450, which provides in part "a temporary mental condition caused by the recent use of drugs or intoxicants is not legal insanity." Appellant in essence asserts that instruction is incorrect as that provision is not contained in section 25.5 ("this defense shall not be found by the trier of fact solely on the basis of a personality or adjustment disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating

substances.") or revised CALJIC No. 4.00 (defense of insanity). However, that language is supported by *People v. Kelly* (1973) 10 Cal.3d 565, 576.

CALJIC No. 4.02 provides in part: "A person is legally insane if, by reason of mental disease or mental defect, either temporary or permanent, caused in part by the long continued use [alcohol] [drugs] [narcotics], even after the effects of recent use of [alcohol] [drugs] [narcotics] have worn off, [he] [she] was incapable at the time of the commission of the crime of either." Citing to *Kelly*, the comment to that instruction states, "For drug intoxication to be legal insanity it must be a 'settled insanity' and not merely a temporary condition produced by the recent use of intoxicants." (Com. to CALJIC No. 4.02 (2008 ed.) p. 151.)

In noting that section 25.5 had changed the operative law with respect to insanity caused by the voluntary ingestion of intoxicants, the court referred to the statute's Legislative history, "'Clinicians agree, that substance abuse, personality, and adjustment disorders are considered as a mental illness but, are not seen as a major mental disorder. There is a significant difference between an individual with a major mental disorder and a substance abuser. The individual with a major mental disorder does not choose the illness. However, difficult as it may be, a drug or alcohol abuser does have a choice. Typically, these individuals have the capacity to distinguish between right and wrong and should be held responsible for their crimes.'" The legislation takes the position 'that substance abuse and addiction is self-induced and does not, by itself, excuse criminal behavior.' By enacting this statute, the Legislature expressed its intent that individuals rendered insane solely because of their substance abuse should be treated differently than those afflicted by mental illness through no conscious volitional choice on their part." (Citations omitted.) (*People v. Robinson* (1999) 72 Cal.App.4th 421, 427-428.)

In *Chaffey*, the defendant took an overdose of a prescription medicine for the purpose of committing suicide and while in an unconscious state, she drove a car and subsequently was convicted of driving under the influence of an intoxicating drug. (*People v. Chaffey*, *supra*, 25 Cal.App.4th at p. 853.) The Court of Appeal held that

under the circumstances there (the label warned the medication could cause drowsiness), a trier of fact could conclude the intoxication was voluntary. (*Id*., at pp. 854, 857-858.) The court noted the general rule that where a person was tricked into taking an intoxicating substance, the intoxication resulting from such trickery was not voluntary. (*Id*., at p. 855.) The court discussed involuntary intoxication and cited cases which characterized involuntary intoxication as including when a defendant had taken prescribed drugs with severe unanticipated effects or when a prescribed drug was taken pursuant to medical advice and without knowledge of its potentially intoxicating effects. (*Id*., at p. 856.)

For instance in *People v. Hari* (Ill. 2006) 843 N.E.2d 349, 359, a case cited by appellant, the Supreme Court of Illinois interpreted an Illinois statute providing: "'A person who is in an intoxicated or drugged state is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." The court determined that the plain meaning of "involuntary intoxication" in the statute included "intoxication resulting from the unexpected and unwarned adverse side effects of medication prescribed by a physician." (*Id*., at pp. 359-361.)

However, unlike those cases, appellant did not have a prescription for Zoloft nor was he under a doctor's care; instead he was given the drug by a friend. Appellant does not claim he was tricked into taking the Zoloft. Appellant admitted he also had been drinking a lot of beer. Taking medication which requires a physician's prescription, without a prescription and the accompanying evaluation and discussion of possible side effects by a medical doctor, especially when accompanied by drinking alcohol, is more similar to using cocaine or methamphetamine as he had no legal right to the drug. Under these circumstances, appellant assumed the risk of any adverse side effects. Accordingly, we agree with the trial court that appellant's intoxication was voluntary and the court

properly granted the motion for a directed verdict as there was no substantial evidence to support a finding of involuntary intoxication or insanity.

II. Instructions

The court gave CALCRIM No. 3427, which defined involuntary intoxication. Appellant contends the court erred by failing to additionally instruct the jury that a person may become involuntarily intoxicated if he takes medications that have unanticipated side effects because unconsciousness due to involuntary intoxication is a complete defense. Appellant reasons his adverse reaction was not voluntary as he did not intend to suffer ill effects, only to alleviate his depression.

"""It is well established in California that the correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction."""" (*People v. Wilson* (1992) 3 Cal.4th 926, 943.) Instructions are viewed in the context of the charges and the entire trial record. (*People v. Moore* (1996) 44 Cal.App.4th 1323, 1330-1331.) When the instructions given comply with legal requirements, a trial court has no sua sponte duty to add amplifying or clarifying instructions. (See *People v. Beeler* (1995) 9 Cal.4th 953, 983.) A judgment cannot be set aside on the basis of instructional error unless it is reasonably probable the jury would have reached a result more favorable to an appellant absent the error. (*People v. Moore*, *supra*, 44 Cal.App.4th at p. 1331.)

In brief, the jury was instructed: A defendant is not guilty of murder if he acted while unconscious; unconsciousness may be caused by involuntary intoxication; and the People had to prove beyond a reasonable doubt the defendant was conscious when he acted. (CALCRIM No. 3425.) A person is involuntarily intoxicated if he unknowingly ingested some intoxicating liquor, drug or other substance. (CALCRIM No. 3427.) It might consider voluntary intoxication in a limited way in deciding whether the defendant acted with an intent to kill or acted with deliberation and premeditation or was

unconscious when he acted; a person is voluntarily intoxicated if he became intoxicated by willingly using any intoxicating drug, drink or other substance knowing that it could produce an intoxicating effect or willingly assumed the risk of that effect. (CALCRIM No. 625.) The jury was also instructed that voluntary intoxication that caused unconsciousness would have the effect of reducing the offense to involuntary manslaughter. (CALCRIM No. 626.)

As discussed above, we concluded that the ingestion of an unprescribed medication with unanticipated side effects and drinking is not involuntary intoxication. Thus, the court did not err by not giving this unrequested instruction. The other instructions adequately instructed the jury about voluntary and involuntary intoxication and unconsciousness.

III. Exclusion of Evidence

Appellant contends the court erred in excluding evidence regarding his intent in taking Zoloft. "[A]n appellate court applies the abuse of the discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Waidla* (2000) 22 Cal.4th 690, 717; see also *People v. Jablonski* (2006) 37 Cal.4th 774, 821 [relevance determinations reviewed for abuse of discretion.].)

Elsa Acedo, appellant's mother, testified Phil Hipolito, a family friend, gave appellant a bottle of Zoloft tablets and told him how to use it on the afternoon before the deaths of Maila and Duke. When appellant sought to ask his mother what Hipolito told appellant the drug was for, the prosecutor objected to the question as calling for hearsay. Appellant's counsel replied the testimony was offered to establish appellant's state of mind. The trial court sustained the objection and ruled the proposed testimony was irrelevant.

Appellant posits evidence he was unaware of the adverse effects of Zoloft would give the jury some basis to find he was involuntarily intoxicated and could have raised a

reasonable doubt on the intent element, and as the outcome was dependent on who the jury believed, evidence supporting his version of events would have enhanced the credibility of his defense.

Appellant was convicted of second degree murder, meaning the jury found he was conscious even if he was intoxicated; otherwise, it would have convicted appellant of involuntary manslaughter. Hipolito's statement to appellant could not have influenced the jury's decision as to whether he intended to kill as the instructions made it clear that any intoxication (voluntary or not) was entitled to the same weight.

We have determined as matter of law that under the circumstance of this case appellant was not involuntarily intoxicated due to any unanticipated side effects of taking Zoloft. Thus, we agree with the trial court that any information about what Hipolito told appellant about Zoloft would have been irrelevant.

IV. Expert Testimony

A. Background

Before eliciting Detective Paul Delhauer's opinion about the nature of appellant's injuries, the prosecutor presented extensive testimony by the detective about his qualifications. Before joining the Sheriff's Department, Delhauer received a bachelor's degree in liberal arts and completed course work in physics for health sciences applied to human physiology. Delhauer subsequently attended the Sheriff's academy, spent years working in custody and patrol units, was cross-trained as a coroner's investigator, and served in that capacity for six months while on loan to the coroner's office. During Delhauer's tenure in the detective and homicide bureaus, he was directly involved in over 300 criminal investigations, assisted in over a thousand other investigations, and interviewed tens of thousands of victims, witnesses and suspects. In the course of his training as a reconstruction expert, and as the department's only certified criminal

investigative analyst, Delhauer took advanced investigative classes on such topics as crime scene investigation, blood pattern analysis, fire causes and origins for fire arson investigators, and investigation of explosives. The detective had written analysis of about 68 cases and looked at hundreds more. On the average, Delhauer had been consulted on or otherwise looked at 100 cases per year in which someone had died and the question was whether the death had resulted from a criminal act or was just an accident.

Appellant made a foundational objection to Delhauer's testimony on the basis he was not a doctor and lacked medical training.

After the court found Delhauer qualified as an expert in the field of crime scene investigation, he offered an opinion about the cause of appellant's injuries. Based upon his review of documents and information regarding the crime scene as well as appellant's medical records and photographs of appellant's injuries, Delhauer opined the burns appeared to be flash burns, which result almost instantaneously from a brief but intense exposure to super-heated gas or fire. Such burns leave many nearby areas that are not so exposed relatively unscathed. There were indications appellant had raised his arms to protect his torso from the flames. The cuts on appellant's left arm appeared to have been caused by coming into contact with broken glass. Delhauer opined that evidence suggested appellant used his arms to break the window and make his escape. The flash burns probably occurred when the flames flashed toward the source of fresh air.

B. Qualifications

Appellant contends the court erred in allowing into evidence improper expert testimony, i.e., Detective Delhauer was not qualified to give an opinion as to the nature and cause of appellant's injuries because he was not a medical doctor or an arson investigator and only saw pictures of appellant's wounds after they had healed so he was not qualified to render an opinion on whether appellant's burns were flash burns or burns from sustained exposure to heat.

"A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates. Whether a person qualifies as an expert in a particular case, however, depends upon the facts of the case and the witness's qualifications. The trial court is given considerable latitude in determining the qualifications of an expert and its ruling will not be disturbed on appeal unless a manifest abuse of discretion in shown." (Citations omitted.) (*People v. Bloyd* (1987) 43 Cal.3d 333, 357.)

Appellant cites *People v. Fierro* (1991) 1 Cal.4th 173 as support for his proposition Delhauer was not qualified to give an opinion on the cause of appellant's injuries. In *Fierro*, the trial court allowed David Duncan, a defense expert, to testify as a ballistics expert based on his previous experience examining spent projectiles, but determined that Duncan was not qualified to give medical testimony concerning the nature of the victim's injuries or the trajectory pattern of the bullet. (*Id*., at p. 224.) The court reasoned that: "Although one need not necessarily be a licensed physician to give a medical opinion, here it is evident that Duncan was totally deficient in the requisite background, training or experience to state an opinion on the nature or cause of the victim's wounds." (Citation omitted.) (*Ibid*.)

In contrast, Delhauer had cross-trained as a coroner's investigator and worked for six months in the coroner's officer and had taken classes in human physiology and advanced cases in the origins and causes of fires. Delhauer, who read the medical reports detailing appellant's injuries, explained why the burns were flash burns rather than burns from extensive exposure to fire. His opinion was based more on his knowledge of fire than medicine. We cannot say that the court abused its discretion in finding that training and experience qualified Delhauer to render an opinion on the origin and cause of appellant's injuries from the fire.

DISPOSITION

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

JACKSON, J.